

# **EXHIBIT 3**

FLSA-953 JUNE 22, 1967

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[SFgate]

Your query was:  
day rate

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June 22, 1967

This is in further reference to your letter of May 19, 1967, concerning the application of the Fair Labor Standards Act to custodians, bus drivers and other employees of your school system.

The application of the act to schools is discussed generally in the enclosed speech given before the College and University Personnel Association, Eastern Regional Conference, on February 9, 1967. It should be noted that newly covered employees of educational institutions, unless specifically exempt, must be paid not less than \$1.00 an hour and overtime compensation at a rate of not less than one and one-half times their regular rates of pay for all hours worked in excess of 44 hours in a workweek beginning February 1, 1967; 42 hours in a workweek, beginning February 1, 1968; 40 hours in a workweek, beginning February 1, 1970.

You state your bus drivers are also employed as custodians and are paid \$10.00 per day regardless of the number of hours they work in a day. In addition, they are paid \$2.00 per hour for extra trips. You ask how to determine their regular rate of pay. Where employees perform two types of duties for the same or another department in the school, all hours worked by such employees must be counted and compensated according to the applicable minimum wage and overtime compensation requirements of the law.

The principles for computing overtime compensation based on an employee's regular rate of pay are discussed in section 778.107 through 778.122. Section 778.122 states that if an employee is paid a flat sum for a day's work without regard to the number of hours worked in the day, and if he receives no other form of compensation for services, his regular rate is determined by totaling all the sums received at such day rates in the workweek and dividing by the total hours actually worked. He is then entitled to extra half-time pay at this rate for all hours worked in excess of the applicable maximum workweek. In those workweeks when he makes "extra trips" at \$2.00 per hour, the hours worked and the wages received must be added to the total hours worked and the total earnings received. The total wages at both day rates and hourly rates are added together and divided by the total hours worked to determine the regular rate for that week. Additional half-time must then be paid on the new regular rate.

With respect to custodians who are employed on other duties in the evening at rates other than those they receive for performing custodial duties in the daytime, as well as the clerks employed on the Federal E.S.E.A. Program, see section 778.115. If an employee in a single workweek works at two or more different types of work for which different nonovertime rates of pay of not less than the applicable minimum wage have been established, his regular rate for that week is the weighted average of such rates, unless he is employed pursuant to section 7(g)(2) of the act (formerly 7(f)(2)).

Section 7(g)(2) of the Act provides that an employee who performs two or more different kinds of work for which different straight-time hourly rates are established may agree with his employer in advance of the performance of the work that he will be paid during overtime hours at a rate of not less than one and one-half times the hourly nonovertime rate established for the type of work he is

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performing during such hours. This method of payment is explained further in section 778.419.

If you have any further questions, you may wish to communicate with our Field Office at 306 Ringgold Street, McKeesport, Pennsylvania 15132. That office will be glad to be of assistance to you.

Sincerely yours,

Administrator

Enclosures 5

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